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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

No. 252.

ALLEN-BRADLEY LOCAL NO. 1111, UNITED ELECTRICAL,
RADIO AND MACHINE WORKERS OF AMERICA, et al.,

Appellants,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD and
ALLEN-BRADLEY COMPANY,

Respondents.

REPLY BRIEF.

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Attorneys for Appellants.

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Respondents.

REPLY BRIEF.

The importance of the issues raised in this case is so great that we consider it essential to reply to some of the major assertions in respondents' briefs which, we believe, are inaccurate and fallacious.

I.

Respondents Err in the Contention That No Issue Was Raised in Proceedings Before the State Board and State Courts That Congress Had Pre-empted the Subject Covered by the National Act.

In the proceedings before the Wisconsin Board, appellants filed objections to jurisdiction on the grounds that

the National Act is exclusive and paramount (R. p. 32). In the formal answer, appellants alleged that the Wisconsin Board has no jurisdiction to proceed in the matter and is unconstitutional because it illegally interferes with interstate commerce. Orally (R. p. 35), objection to jurisdiction was made on the grounds that in part the National Act is exclusive and paramount with respect to matters of collective bargaining.

In the Circuit Court, the issue of pre-emption was raised in paragraph 21 (R. p. 9), wherein appellants alleged:

“That Congress in enacting the National Labor Relations Act has pre-empted the subject covered by said National Labor Relations Act in the exercise of its powers to regulate interstate commerce, and that the State is without any present authority or jurisdiction to regulate in any manner the same general subject as covered by the National Act.”

The respondents filed answers denying the foregoing allegation. The Wisconsin Court, in its decision, stated that the issue of pre-emption was raised in Case (R. p. 41), and decided the issue adversely to appellants. No extended argument on this issue was made in the Wisconsin Supreme Court because it had decided this question in **Fred Rueping Leather Company v. Wisconsin Employment Relations Board**, 228 Wis. 175. It was deemed futile to urge that the Wisconsin Court reverse its decision in the Rueping case.

Appellants specifically stated that it was only for purposes of the appeal to the State Supreme Court that the issue of pre-emption would not be argued.

II.

Appellants Need Not Establish That Personal and Property Rights Are Violated in Order to Raise Constitutional Issues.

Board counsel contend that since the National Act confers no private right or remedy, no constitutional rights of appellants under the National Act can be invalidated by the Wisconsin Act. (Board Brief, p. 17). The right of a party to raise constitutional issues is not so narrowly limited.

The union and appellants are members of the class of employees and labor organizations for whose specific benefit the National Act was adopted. If the State Act, in fact, is unconstitutional as applied to appellants, they, as members of the class, are entitled to raise the question of constitutionality. The Wisconsin Act was applied to appellants by assumption of jurisdiction and proceedings conducted by the Wisconsin Board enforcing the State Act. Appellants have been prejudiced by attempt to enforce State Act against them. They have been wrongly included within the terms of the Act (*Citizens National Bank v. Kentucky*, 217 U. S. 443, 542 L. Ed. 832, 30 S. Ct. 532).

Furthermore, appellants have the right to complain against the specific order issued if, in fact, the Act, under the authority of which the order was issued, is void and unconstitutional because of the National Act. To determine the jurisdiction of the State Board to issue any order under the State Act, it becomes necessary to determine whether the State Board has jurisdiction concurrently with the National Board to enforce a labor relations law covering the same field as the National Act.

If, in fact, the State Act is an integrated and indivisible plan of regulation of the subject of labor relations and is unconstitutional, then the order issued is void and uncon-

stitutional because it was made in the exercise of a jurisdiction that does not exist. An unconstitutional act is no law. **Buchanan v. Warley**, 245 U. S. 60, 62 L. ed. 149, 38 S. Ct. 16. It confers no right; it imposes no duty; it affords no protection; it is in legal contemplation as inoperative as though it has never existed. **Morton v. Shelby Co.**, 118 U. S. 425, 442, 6 S. Ct. 1125; **Bonnett v. Vallier**, 136 Wis. 193.

It therefore becomes necessary for this Court to determine whether the final order, regardless of its substance, is based on a valid law in so far as it was issued by a board claiming the right to exercise jurisdiction over the same subject of labor relations of employers engaged in interstate commerce and subject to the National Act.

III.

Wisconsin Court, as Do Respondents, Erred in Claim That Pre-emption by National Act in the Field of Collective Bargaining Would Constitute a License to Employees in Wisconsin to Commit Acts of Violence in Labor Disputes. The Police Power of the State to Punish or Restrain Lawless Acts Would Remain Unimpaired if Wisconsin Act as Applied to Interstate Commerce is Held Unconstitutional.

It is repeatedly urged in respondent's brief that the states would be shorn of all police power to maintain law and order if this Court rule that the National Act has pre-empted the field. The respondents urge further that such ruling would undermine the very essentials of the relations between the state and federal governments. Such ruling would have no effect as feared. Congress, in the National Act, has sought to remedy evils to interstate commerce which the states had not theretofore regulated in exercise of police power. It was only after the National Act was passed that several states subsequently enacted

state labor relations acts patterned along similar lines. The power which the states had previous to the enactment of the National Act to punish for wrongful acts committed in the course of a labor dispute still exists.

Committee reports and statement of Senator Wagner, cited in respondent's brief, expose the fallacy of this contention. The state criminal and civil laws against lawless acts of employees are valid and enforceable, even though the Wisconsin Act is unconstitutional. As a matter of fact, the procedure and requirements of the Wisconsin Act make it utterly unfeasible as a means of maintaining law and order in strike situations. The orders of the Wisconsin Board are enforceable only after confirmation by Circuit Court. 111.07 (7), Wisconsin Act. From ten to forty days notice of hearing must be given to adverse party after complaint is filed. 111.07 (2), Wisconsin Act. If the Board's order is not obeyed, it must petition Circuit Court for enforcement decree and give at least ten days' notice of hearing to adverse party. 111.07 (7), Wisconsin Act. After the Circuit Court has confirmed the order it may still be reversed by appeal to the Wisconsin Supreme Court. Sec. 111.07 (7).

A more cumbersome means of dealing with lawless conduct in strikes is hardly conceivable. As a matter of fact, employers have available the right to injunctive relief under Section 103.51—103.68, Wisconsin Statutes, which is the Wisconsin equivalent of the Norris-La Guardia Act. The right to protection from lawless conduct in labor disputes by injunctive relief in a court of equity is as available if the Wisconsin Act is held unconstitutional as it is presently, because the federal act does not cover the subject. We submit that the extreme concern for the police power of the state is unnecessary, because it is not jeopardized.

IV.

Decisions of Wisconsin Board Refute Claim That Wisconsin Act Supplements and Promotes Purposes of National Act. State Action Is as Obstructive to Accomplishment of Federal Purposes as Were Rival Independent National Boards Established Under the N. I. R. A.

Respondents urge that grant of exclusive authority to the National Board was intended to prevent other national boards from acting in the field, but not to exclude states. At the time the national act was enacted there were no state laws regulating collective bargaining. Further, there were no state labor relations acts at the time, but there were numerous federal labor boards seeking to regulate approximately the same subject. The failure of the act to specifically prohibit the states from regulating the subject was quite unnecessary, particularly in view of the supremacy of federal regulation in the interest of protecting interstate commerce.

The fact that exclusive authority was given to the National Board over other national boards dealing with labor relations would indicate that the Congress would have prohibited rival state boards, if any existed, from performing the same functions. There is no logical reason why a state board should retain authority to regulate the subject of labor relations covered by the national act any more than national labor boards of particular industries which were established under the N. I. R. A. It was hardly necessary for Congress to anticipate that some states might assert rival concurrent jurisdiction.

Practically all of the states except Wisconsin have provisions therein prohibiting jurisdiction of state boards in cases subject to the national act (Appellant's Brief, pp. 29-30).

The need for an exclusive supreme agency is indicated further in the statement quoted from Senator Robert F. Wagner on page 36 of Board's brief. The evils which Senator Wagner refers to in this quote are precisely the evils which have grown up as the result of the concurrent jurisdiction of the Wisconsin Board. In support of this statement we refer to the following cases which were considered by the Wisconsin Board in enforcement of its act, which demonstrates that the exercise of concurrent jurisdiction by the State Board is an intolerable obstacle to the accomplishment of the full purposes and objectives of Congress in enacting the federal act. We cite the following decisions of the Wisconsin Board because of the bald assertion of counsel for the Board that the Wisconsin act "aids in the accomplishment of federal purposes" (Board's Brief, p. 99).

(A) The Allen-Bradley Company filed its complaint against the appellant union and its members on or about May 30, 1939 (R. 28-31). Appellant union filed charges of unfair labor practices against respondent in the Twelfth Regional Office of the National Board on July 1, 1939. The hearing conducted by the Wisconsin Board lasted approximately two weeks. The purpose of this hearing was to enforce the provisions of the Wisconsin act.

The company sought to have the employees who had committed employee unfair labor practices be declared no longer employees of the company as defined in section 111.02 (3) (b). Under the authority given to the Wisconsin Board by Section 111.07 (4), Wis. Act, the union had every reason to expect that it would suspend the exclusive bargaining agency rights of the union because it and all of its members violated some of the provisions of section 111.06 (2) and (3). The failure of the Wisconsin Board to punish appellant union by terminating its bargaining rights for up to a year amounted to an unwillingness of

the Board to enforce the state act. The existence of this authority is contrary to Congressional intent as expressed in the national act, under which the appellant union could not be deprived of its bargaining rights so long as it represented the majority of the employees, even though it committed the acts set forth in the interlocutory and final order of the Board (Appellant's Brief p. 43). Furthermore, the State Board found that all of the members of the union who had engaged in unfair labor practices by mass picketing, etc., had committed unfair labor practices during the course of the strike, and could have terminated their statutory rights to protection from employer unfair labor practices. That they found only fourteen to have committed such acts does not eliminate the essential fact that on the record they could have terminated statutory benefits and protection which the national act intended should continue without any question.

Based on the charges, and investigation made by its agents, the National Board authorized the issuance of a complaint against the Allen-Bradley Company, charging unfair labor practices in violation of Sections 8 (3) and 8 (5), Nat. Act. While these proceedings were pending before the National Board the company filed a petition to have an election for the purpose of determining the bargaining agency for employees of the company.

At the hearing objection was made to the proceedings on the grounds that the State Board was without jurisdiction, and further that proceedings were pending before the National Board charging the company with unfair labor practices, and that the Board had authorized issuance of a complaint against the company. The petition of the Allen-Bradley Company was filed with the Wisconsin Board on or about September 7, 1940, as case number II 213-E-48. Hearing was held on September 24, 1940. One of the exhibits introduced then was a letter addressed

to Max E. Geline from John G. Schott, then Regional Director of the Twelfth Regional Office, which stated as follows:

"September 24, 1940

Mr, Max E. Geline
Attorney-at-Law
Empire Building
Milwaukee, Wisconsin

Re: Allen-Bradley Co. XII-C-473

Dear Mr. Geline:

This is in reply to your inquiry about the status of Case No. XII-C-473, in the Matter of Allen-Bradley Company and Local 1111, United Electrical, Radio and Machine Workers of America, based upon a Charge dated July 1, 1939, and an Amended Charge dated September 30, 1939.

These Charges have been investigated by this office, pursuant to the Rules and Regulations of the Board, and a report has been made to the Board upon the results of such investigation. The Board has since directed me to issue a Complaint in this case, alleging violations of Section 8, sub-sections (1), (3), and (5) of the National Labor Relations Act, and I have requested the Acting Regional Attorney of this office to draft a Complaint and Notice of Hearing, in accordance with the Board's direction, as soon as the legal schedule in this office permits.

Very truly yours,

John G. Schott,
Regional Director.

Despite the pendency of these National Board proceedings, the Wisconsin Board ordered and directed that an election be held to determine the bargaining agency of employees of said company. Case No. II 213-E-48; Decision No. 121, dated October 7, 1940.

We reprint in Appendix hereto part of the Memorandum accompanying the order and direction of election because it sets forth significantly the impropriety of concurrent jurisdiction by the Wisconsin Board.

The election was conducted by the State Board on October 30, 1940. Of the 560 individuals who were eligible to vote, the total ballots cast numbered 526—292 voted in favor of the union and 226 voted against it.

If the ballots cast had resulted in a majority of votes against having Local 1111 act as bargaining agency, under Section 111.06 (1) (e), Wis. Act, the employer would commit an unfair labor practice by bargaining with Local 1111, either as exclusive bargaining agency or for its members, even though at that time the union was recognized by the National Board as exclusive bargaining agency, with which the company was duty bound to bargain.

Contrary to the assertions made by counsel for the Board, the Wisconsin Board has in numerous decisions ruled that it would be an unfair labor practice for an employer to bargain collectively in any manner with a union representing less than a majority. We call this Court's attention to the statement of Board's counsel on page 96 commenting on the meaning of section 111.06 (1) (e):

"Hence, when Sec. 111.06 (1) (e) prohibits collective bargaining with the representatives of less than a majority of the employees in a collective bargaining unit, what said section does is merely to prohibit the making of a contract with a minority union with respect to wages, hours and working conditions for all employees in the bargaining unit. There is no difference between the National Act and the State Act in this regard. The Board has never considered Sec. 111.06 (1) (e), when read in connection with Sec. 111.02 (5), to prohibit a minority union from bargaining with respect to wages, hours and working conditions with respect to its members only. The Board has

applied the State Act exactly as the National Act was applied by this Court in Consolidated Edison Co. v. National L. R. Bd. (1938), 305 U. S. 197.”

Counsel had apparently overlooked some of the decisions of the Wisconsin Board, wherein it held that an employer would be guilty of an unfair labor practice if he bargain collectively with representatives of a minority, and a union representing a minority is guilty of an unfair labor practice if it seeks to bargain collectively.

We cite the statement of the Wisconsin Board in Case III, No. 464 E-161, Decision No. 324, in the Matter of the Petition of Furniture Manufacturers, Inc., for determination of bargaining representatives, decision rendered on November 3, 1941, wherein the Wisconsin Board ordered an election on November 31, 1941.

In this case the Union objected in part to proceedings by the Board instituted on petition of the employer on the grounds that a rival petition was filed by it with the National Board. In its memorandum attached to the order of election the State Board stated:

“Unless an employer is satisfied by some evidence produced by the Union, that such Union actually represents a majority of the employes for which the Union is attempting to bargain collectively, the employer is guilty of an unfair labor practice in bargaining collectively with such organization, and with the Union itself. . . . Under Chapter 111 of the Wisconsin Statutes, an employer is bound to bargain collectively with the representative of a majority of its employes, and can be compelled to do so by this Board. Under that Chapter, an employer is given the right to request this Board to conduct an election to determine whether or not the representative claiming to represent a majority, actually does represent such majority. Notwithstanding the fact that this company is engaged in interstate commerce, and comes within the

terms and under the jurisdiction of the National Labor Relations Act, it is engaged in business in Wisconsin, and is subject to the laws of this State. Before any unfair labor practice charge, alleging failure to bargain in good faith, could be filed against this employer, there would have to be a determination that the Union actually represented a majority of the employees, and under Section 111.06 (1) (d), such employer cannot be deemed to have refused to bargain until an election has been held and the result certified to him by the Board. We have, for that reason, ordered this election."

Under the rules of the National Board, the employer in the two cases above cited would not be permitted to file petitions to determine representations, as no rival organizations claiming to represent a majority were involved in the controversy. Article III, Secs. 1, 2 and 3, Rules and Regulations, N. L. R. B., Series 2, July 11, 1939, N. L. R. B.

In **Morris Resnick, Inc., and Quality Packing Company v. Amalgamated Meat Cutters and Butcher Workmen of North America, A. F. of L., Local No. 248**, Case No. 1, No. 473 Cw-47, Decision No. 334, the employer complained that the Union which at the time did not represent a majority of the employees attempted to intimidate and compel the employer to sign an all-union agreement in violation of Section 111.06 (1) (c), Wis. Act. The Wisconsin Board ruled that the employers involved had no right to enter into a contract demanded by the Union, and that no legal labor dispute existed between the Union and the employer under the Wisconsin Act. The Wisconsin Board further found that the Union was guilty of unfair labor practices in that they have done the following acts prohibited by Sub-section 2 of Section 111.06 of the Wisconsin Statutes:

"A. In violation of Section 111.06 (2) (b) coerced, intimidated and attempted to induce complainants to interfere with their employees in the enjoyment of their

legal rights, including those guaranteed in Section 111.04 of the Wisconsin Statutes, and coerced, intimidated and attempted to induce complainants to engage in practices with regard to their employees which would constitute unfair labor practices, if undertaken by complainants, of complainants' own volition, as follows:

“(b) To bargain collectively with representatives of less than a majority of the employees in a collective bargaining unit of complainants, contrary to the provisions of Section 111.06 (1) (e), Wisconsin Statutes.”

As an order based on the foregoing findings of fact and conclusions of law, the Wisconsin Board ordered the union and its members to cease and desist, among other matters, from:

“(c) Attempting to induce complainants or either of them to bargain collectively with Local No. 248 unless and until said Local No. 248 has been duly designated by the majority of the employees of a collective bargaining unit of said complainants as their exclusive bargaining agent.”

The order of the State Board denying the union the right to bargain collectively in any way with the company under the Wisconsin Statutes is contrary to the permissible rights of employees under the national act to self-organization and collective bargaining, as set forth in **Consolidated Edison Co. v. N. L. R. B.**, 305 U. S. 197. Furthermore, the dispute is a legal dispute under Sec. 2 (9), National Act.

Returning to the question of the possible consequences if the union had lost the election in the Allen-Bradley case, the company would be duty bound to refuse to bargain collectively with the Union, even though at the same time it was guilty of unfair labor practices for failure to bargain collectively under the national act. In this con-

nection we cite the decision of this Court in **N. L. R. B. v. P. Lorillard Co.**, decided Jan. 5, 1942, ... U. S. ..., 86 L. ed., p. 358, wherein this Court upheld the order of the National Board directing that the company involved bargain collectively, even though the local union, because of employer unfair labor practices, might no longer represent a majority of the employees. The order of the United States Circuit Court of Appeals modifying an order of the National Board, by directing the Board to conduct an election to determine whether the local had lost its majority to a rival independent association, was reversed by this Court. This Court stated:

"The Board had considered the effect of a possible shift in membership alleged to have occurred subsequent to Lorillard's unfair labor practices, but it had reached the conclusion that in order to effectuate the policies of the Act Lorillard must remedy the effect of its prior unlawful refusal to bargain collectively with the union shown to have a majority on the date of Lorillard's refusal to bargain. This was for the Board to determine and the court below was in error in modifying the Board's order in this respect." 86 L. ed., at 359.

The Wisconsin Board, in ordering the election at the Allen-Bradley Company under the circumstances then existing, in effect accomplished exactly what the Circuit Court of Appeals sought to accomplish by directing the election. The National Board itself would not permit the conduct of an election at a time when a complaint was pending against the employer charging him with unfair labor practices. An election under such circumstances would be improper and unfair, until the effects of the employer's unfair labor practices had been dissipated.

In its Fourth Annual Report the National Labor Relations Board declared:

"The Board also attempts to hold an election at a time when the balloting will accurately reflect the untrammelled desires of the employees. Consequently, if the Board has found that the employer has engaged in unfair labor practices, it usually postpones the election until some future time after its decision, when the effects of the unfair labor practices will have been dissipated; but the Board will, in such cases, when requested to do so by all the parties involved, direct that an election be held forthwith" (p. 77).

What would the duty of the Allen-Bradley Company be if the union lost the election conducted by the Wisconsin Board? If it bargained with the union, it would be guilty of violating Sec. 111.06 (1) (e); if it fails to bargain with the union it violates Sec. 8 (5) of the National Act.

One of the principle criteria for determining conflict between State and Federal Acts is stated as follows in **Southern R. Co. v. Reid**, 222 U. S. 424, 56 L. Ed. 257, 32 S. Ct. 140:

"Acts of Congress and state laws are in conflict when, if one obeys the state laws he incurs the penalties of the federal laws, and if he obeys the federal law he incurs the penalties of the state laws."

In a decision of the Wisconsin Board in **Lakeside Bridge & Steel Company v. Int. Assoc. of Bridge, Structural and Ornamental Iron Workers, Local 471 et al.**, Case II, No. 256, Cw-32, Decision No. 147, the employer complained that the union attempted to force the company to bargain collectively with it. A strike was called by the union to enforce collective bargaining. After setting forth various facts, the Wisconsin Board as conclusions of law found that the employer had no right or duty to recognize the union as the collective bargaining agent of its production employees; and that the union committed unfair

labor practices by attempting to coerce it into bargaining collectively at a time when it represented less than a majority.

As its order, the Wisconsin Board directed the union to cease and desist from:

“(d) attempting to induce Lakeside Bridge & Steel Company to bargain collectively with Local 471, unless and until Local 471 has been duly designated by a majority of the production employees of Lakeside Bridge & Steel Company as the exclusive bargaining agent of all production employees of Lakeside Bridge & Steel Company;

“(e) attempting to induce Lakeside Bridge & Steel Company by any means whatsoever to agree to specific terms in a collective bargaining contract, the performance of which terms by Lakeside Bridge & Steel Company would be an unfair labor practice by Lakeside Bridge & Steel Company under Chapter 111 of the Wisconsin Statutes.”

The foregoing decision, to which others could be added, establish the drastic manner in which the enforcement of the Wisconsin Act as to parties engaged in interstate commerce nullifies and obstructs the full accomplishment of the purposes of Congress in enactment of the National Labor Relations Act.

It cannot be assumed that the National Board is incapable of coping with the labor relations problems subject to its jurisdiction. The foregoing decisions of the State Board indicate the serious problem which the National Board has in enforcing the National Act in the face of the existing concurrent jurisdiction of the State Board, and the deprivation of the right of employees and labor organizations, guaranteed by the National Act.

As further evidence of the impracticality of having concurrent jurisdiction, we refer to the rival proceedings of

the State and National Boards which took place at the Rock River Woolen Mills in Janesville, Wisconsin. This company manufactures automobile cloth for the automotive industry and employs approximately 230 people. It is subject to the National Act. The Textile Workers' Union of America filed a petition for investigation and certification of representatives on July 6, 1939, in **Rock River Woolen Mills, Case No. 124-204**. A stipulation was entered into between the company and the union for conduct of an election on October 15, 1939. The union refused to consent to the election as agreed upon for various reasons. Upon the refusal an employee of the Rock River Woolen Mills filed a petition to determine representatives with the Wisconsin Board on October 14, 1939.

The Wisconsin Board ordered a hearing for October 18th, and thereafter, by decision dated October 30, 1939, directed an election to be held to determine the bargaining agency among production employees. Objection was filed to its jurisdiction. Prior to rendering its decision the Wisconsin Board was advised that the N. L. R. B. had scheduled a hearing in Janesville, Wisconsin, for November 4, 1939. The Wisconsin Board conducted its election on November 3, 1939. The election resulted in 116 votes in favor of the union and 129 against. The union itself did not participate in the conduct of the election.

Thereafter the company refused to engage in collective bargaining with the Union **for its members** for the reason that under Section 111.06 (1) (e), Wisconsin Act, it would be an unfair labor practice for the employer to engage in such collective bargaining relations.

The National Board conducted a hearing on November 6th and by decision dated December 28, 1939, ordered and directed that an election be held. Volume 18, N. L. R. B. Reports 828. The Textile Workers' Union lost the National Board election, 107 to 129. However, under the

National Act, no legal impediment exists to continuing collective bargaining by the Textile Workers' Union for and on behalf of its members only. The Wisconsin Act prohibits such bargaining. This is another actual case in which the State Act has obstructed the accomplishment and execution of the full purposes of the National Act.

Another case demonstrating the potential and actual obstruction to fulfillment of federal purposes is the decision in the **Matter of the Petition of Sewing Machine Mechanics Association of America for Determination of Bargaining Representatives for Employees of the Phoenix Hosiery Company**, Case I, No. 177 E-39. The Phoenix Hosiery Company is a corporation having its principal offices in Milwaukee and employing approximately 2,300 persons in the manufacturing of full fashioned and seamless hosiery. This company is subject to the National Act.

This company had in effect two closed shop agreements with the American Federation of Hosiery Workers. One such contract was entered into between the Full Fashioned Hosiery Manufacturers of America, Inc., representing approximately 40 manufacturers and covering about 40,000 employees on a nation-wide basis, including the full-fashioned employees of the Phoenix Hosiery Company. This contract was to continue for a period of three years up to and including August 31, 1941. Another contract covering the seamless workers continued in effect until August 31, 1941. The Sewing Machine Fixers Association, an independent union, filed a petition with the National Board to have itself set up as bargaining representative of five sewing machine fixers employed in both the full fashioned and seamless departments of the company.

This petition was withdrawn by the Association with

consent of the National Board and thereafter another petition was filed with the Wisconsin Board in 1940. At a hearing on August 21, 1940, the American Federation of Hosiery Workers objected to the jurisdiction of the Wisconsin Board on the grounds that the labor relations of the employer are subject exclusively to the jurisdiction of the National Board, and further objected to the proceedings on the grounds of the existing collective bargaining agreement aforementioned. The Wisconsin Board in dismissing the petition nevertheless declared in its memorandum accompanying this decision that:

"We recognized that the underlying purpose of the Employment Peace Act is to put into the hands of individual employees engaged in a particular craft, division, department, or plant, the right to determine for themselves whether they desire such craft, division, department or plant set-up as a separate unit, or not, and will not hesitate in any case in which it appears that an employer and a union with which it has a collective bargaining agreement providing for an automatic renewal of such agreement, to order an election at such time as such agreement may be expiring, where the company is notified prior to the termination date that employees in a certain craft, division, department or plant, desire to constitute themselves a separate bargaining unit, and select a new bargaining representative to carry on negotiations for them." Decision of the Wisconsin Board, Case I, No. 177 E-39, Decision No. 115.

The foregoing quotation reveals that the Wisconsin Board considers itself entitled to set up bargaining units based on crafts, regardless of what the history of collective bargaining may be in the particular industry.

The National Act establishes the authority and discretion in the National Board to decide in any particular case what the appropriate unit should be for collective bargaining. Section 9 (b), National Act. Also, **American**

Federation of Labor v. N. L. R. B., 308 U. S. 401, 60 S. Ct. 300, 84 L. ed. 347.

The provisions of the State Act defining appropriate bargaining units are obviously repugnant to the intent of Congress that only the National Labor Relations Board should exercise the authority to set up bargaining units. Increasingly collective bargaining, particularly during the emergency of war-time economy, is based on national arrangements between representatives of industry and the representatives of organized workers in the industry.

The utmost confusion is possible if a small number of vitally important craft workers can claim the right to bargain separately on the basis of the rules contained in the Wisconsin Act. The State Act makes it mandatory to set up craft bargaining units, regardless of how detrimental such separate units may be to the procedure of collective bargaining for the employer, or in the industry. This divided authority to determine bargaining units in industries engaged in interstate commerce in Wisconsin is potentially able to cause much controversy and with destructive consequences resulting from rival claims of statutory authority to bargain for the same employees. It would be practically impossible to include the Phoenix Hosiery Company in a national collective bargaining agreement covering all other manufacturers if the Wisconsin Board sets up separate units such as were requested by the Sewing Machine Mechanics Association in this case.

In the **Matter of the International Union of Operating Engineers, Local No. 311, and The Heil Company, Milwaukee, Wisconsin**, Case I, No. 303 E-78 R-64, Decision No. 185, the petitioning union requested the State Board to set up a bargaining unit for one of the company's plants. The evidence established that the company is engaged in interstate commerce, and objection was taken to the State Board's jurisdiction, because at the time of

hearing a petition had been filed with the National Board. The State Board held that its orders are enforceable until such time as the National Board enters an order in conflict with the order previously made by the State Board.

The Board further held that a collective bargaining agreement with the Steel Workers' Organizing Committee, which covered these employees, would not bar an election requested by a craft group. The Board stated:

"An employer and a union cannot enter into such a contract as will in the future prevent employees from selecting a different bargaining representative or a new collective bargaining unit." P. 2, Memo. accompanying Order of Dismissal.

The Board further stated:

"We have in all cases submitted to us for decision attempted to construe this Section of the Statutes in as liberal a manner as possible to the end that small groups employed in separate divisions, departments or plants might have the benefits of collective bargaining with their employer even though the vast majority of the employees of such an employer did not, for some reason or another, desire to avail themselves of such privilege." Ibid.

The claim of authority of the Wisconsin Board to nullify industrial unit collective bargaining contracts at the request of minorities obviously makes labor relations based on existing industrial unit contracts untenable in the State of Wisconsin. This obviously is repugnant to the Federal policies and intention of Congress that the National Board determine what shall be the appropriate bargaining unit in a particular case.

Under Section 2 (9), National Act, defining labor disputes, employees are entitled to maintenance of their status in the course of a strike whether or not they have a secret

ballot and whether or not they constitute a majority or minority of the employees.

Under Section 13, National Act, the right to strike is unaffected by provisions of the act. Under the State Act the Board has asserted the right to conduct an election itself where necessary to determine the majority wishes of striking employees. The legality of the strike and the further right to maintenance of statutory employee status is made dependent on the maintenance of a majority status even during the strike. See **Allis-Chalmers Manufacturing Co. v. Allis-Chalmers Workers Union, Local 248**, Case VI, No. 312, Decision No. 186, wherein the State Board ordered an election during strike to determine the desires of the majority of the employees.

The foregoing actual cases, to which many more could be added, make abundantly evident that the only way in which Federal purposes and policies can be accomplished is by nullifying the claim of the Wisconsin Board to jurisdiction over cases involving interstate commerce.

V.

Wisconsin Court Erred as to Appellants in Construing National Act as Applicable to Parties Only to the Extent That an Order is Issued in a Particular Controversy.

The Wisconsin Court found it necessary in arriving at its decision to construe the applicability of the National Act to employment relations in the State of Wisconsin. In its construction the Court declared that the National Act is "applied" as to particular parties only to the extent that an order is issued in a particular case.

"Both from the language of the Act and the construction which has been placed upon it by the Wisconsin Supreme Court it is apparent that the Act operates effectively in a particular case only in the

way and to the extent which is determined by the orders of the National Labor Relations Board" (T. p. 47).

Further, the Wisconsin Court stated:

"The vital question for consideration in this case is not whether there is repugnancy in the language of the two acts, but is one of jurisdiction between the State and Federal Governments. Inasmuch as the National Labor Relations Act depends for its effective operation upon the determination of the National Labor Relations Board, there can be no conflict between the acts until they are applied to the same labor dispute" (T. p. 48).

Further, in its decision the Court declared:

"In this case the employer has never been charged with an unfair labor practice, nor has the National Labor Relations Board ever been requested to determine who is the proper bargaining representative. Consequently, the National Labor Relations Act has never been applied to the labor dispute here under consideration and it may never be applied, depending upon the exercise of the discretion of the National Labor Relations Board. Therefore, there can be no conflict of jurisdiction between State and Federal authority in this case" (pp. 48-49).

The foregoing statements make it appear as if the National Act is merely a directive instrument addressed to the National Board which promulgates the law as to particular parties in the terms and provisions of its orders. The Board, under the foregoing construction, possesses legislative powers.

Under the foregoing construction, there is no National Labor Relations Act applicable to employers until and unless there is an order issued by the National Board and until and unless there is some actual obstruction to inter-

state commerce. The application of the law is made discretionary with the Board. This construction of the National Act is erroneous. Respondents, as does the Wisconsin Court, confuse the remedial authority given to the National Board with the law-making power which can only be exercised by Congress. Such construction would clearly invalidate the Act. **Schechter Poultry Corp. v. U. S.** 295 U. S. 495, 79 L. Ed. 1570, 55 S. Ct. 837, 97 A. L. R. 947. **Carter v. Carter Coal Co.**, 298 U. S. 238, 80 L. Ed. 1160, 56 S. Ct. 855.

This Court, in **N. L. R. B. v. Jones & Laughlin S. Corp.** 301 U. S., at 33, stated:

"Thus in its present 'application' the Statute goes no further than to safeguard the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer." 301 U. S., at 33.

All of the measures which the Board is permitted to take in enforcing the act "relate to the protection of the employees and the redress of their grievances, not to redress of any supposed public injury, after the employees have been made secure in their right of collective bargaining and have been made whole." **Republic Steel Corp. v. N. L. R. B.**, 311 U. S. 7, 85 L. ed. 6. The power of the Board to command affirmative action is remedial. **Rep. Steel Corp. v. N. L. R. B.**, supra; **Consolidated Edison Co. v. N. L. R. B.**, 305 U. S. 197, 235, 236, 83 L. ed. 126, 143, 144, 59 S. Ct. 206; **N. L. R. B. v. Penn. Greyhound Lines, Inc.**, 301 U. S. 261, 267, 268, 82 L. ed. 831, 58 S. Ct. 571, 115 A. L. R. 397.

If the Wisconsin Court had properly construed the National Act so that it applied as to employers and employees engaged in interstate commerce, it would then have been

compelled to test the jurisdiction of the State Board by determining whether the State and National Acts may consistently stand together. Although erroneously decided, the Wisconsin Court was compelled to rule on the question of concurrent jurisdiction in order to reach its decision in the case. It decided a federal question. Therefore, this Court, of necessity, must rule on the same federal question.

VI.

Respondents Err in Contention That Decision Holding State Act Unconstitutional as to Interstate Commerce Would Invalidate All Other State Regulations Covering Employers and Employees.

Counsel contend that many fields of state regulation of employer-employee relations would be withdrawn from state regulation if the Wisconsin Employment Peace Act were held unconstitutional as applied to interstate commerce. See Company brief, pages 15-19, and the Board's brief, page 40.

No such consequence could possibly result because the fields of unemployment insurance, workmen's compensation, etc., are clearly not within the field of regulation covered by the National Act. As such they have nothing to do with protection of employee rights to self-organization and collective bargaining and could by no conceivable stretch of the imagination be included in that field.

Reference is made to Section 103.51 of the Wisconsin Act. This section of the statute is in no way connected with the act dealing with labor relations as such, but was intended to curb and restrict the unfair use of the injunctive power by courts as means of interfering with the exercise of the rights of labor to strike and picket. See Frankfurter and Greene, The Labor Injunction.

Counsel often repeated that Congress had not regu-

lated the field of labor relations and that at the time of the enactment the power of Congress to deal with the subject was questionable. The review in the Jones & Laughlin decision of the history of federal regulation of labor relations in the enforcement of the Sherman Anti-Trust Act and in the railroads establish that this assertion is erroneous. That somebody may have thought that the authority under the Commerce clause was doubtful is irrelevant in view of the decisions sustaining the national act.

The Congressional treatment of the subject of labor relations and collective bargaining is based on the exercise of the commerce powers. This power is as paramount in the regulation of the subject of labor relations, because of their effect on interstate commerce, as would be the regulations of the railroads or employment relations under the Railroad Labor Act. The states may not enforce a workmen's compensation act as to railway workers subject to the Employers' Liability Act. See **New York Central Railroad Co. v. Winfield**, 244 U. S. 147, holding a state law permitting recovery of compensation without regard to negligence of employees invalid as applied to railway workers, where the Federal Employers' Liability Act required proof of negligence.

Counsel repeatedly urge that the national act is limited. This is undoubtedly true as to the extent to which Congress intended to prohibit employer unfair labor practices (it could have included many other subjects) and in its refusal to include employee and union unfair labor practices as part of the plan of regulation. In their briefs they refer to the statements of Senator Wagner and the committee reports which establish the Congressional intention was to omit regulations prohibiting pressure by one employee upon another for the purpose of having such employee join a union and bargain collectively. In view of the concrete evidence of Congressional intent, the contentions

of respondents, that the Wisconsin act deals with a field not contemplated by Congress is erroneous. See *New York Central Railroad Co. v. Winfield*, 244 U. S. 147 (Allen-Bradley Brief p. 27).

VII.

This Court Will Consider Constitutional Issues Necessary to Decision of Case.

This Court has held that where a federal ground is present it is incumbent upon this Court, when it is urged that the decision of the state court rests on a nonfederal ground, to decide for itself, in order that constitutional liberties may appropriately be enforced, whether the asserted nonfederal ground independently and adequately supports the judgment. *Abie State Bank v. Bryan*, 282 U. S. 765, 75 L. ed. 699.

In *Leathe v. Thomas*, 207 U. S. 93, 99, 52 L. ed. 119-120, Justice Holmes declared:

"Of course, there might be cases where, although the decision be for other reasons, it would be apparent that a federal question was involved whether mentioned or not. It may be imagined for the sake of argument that it might appear that a state court, if ostensibly deciding the federal question in favor of the plaintiff in error, rightly must have been against him, and was seeking to evade the jurisdiction of this Court. The ground of decision did not appear and that which did not involve a federal question was so palpably unfounded that it could not be presumed to have been entertained, then it may be that this Court would take jurisdiction. *Johnson v. Risk*, 137 U. S. 300, 207."

In *Burgess v. Seligman*, 107 U. S. 20, this Court stated:

"The Federal courts have an independent jurisdiction in the administration of State laws, co-ordinate

with, and not subordinate to; that of the State courts, and are bound to exercise their own judgment as to the meaning and effect of those laws." 107 U. S. 20, at 33.

A statute must be tested not by what has been done under it, but by what it authorizes to be done under its provisions. **Central National Bank of Topeka, Kansas, v. McFarland**, 20 Fed. (2nd) 416, Cert. Denied, 278 U. S. 606, 49 S. Ct. 12, 73 L. ed. 533.

In **Gregg Dyeing Company v. Query**, 286 U. S. 472, 76 L. ed. 1232, 52 S. Ct. 631, 84 A. L. R. 831, this Court stated:

"In maintaining rights asserted under the Federal Constitution, the decision of this Court is not dependent upon the form of the taxing scheme, or upon the characterization of it by the state courts. We regard the substance rather than the form, and the controlling test is found in the operation and effect of the statute as applied and enforced by the State. **St. Louis S. W. R. Co. v. Arkansas**, 235 U. S. 350, 362, 59 L. ed 265, 271, 35 S. Ct. 99; **Hanover F. Ins. Co. v. Harding**, 272 U. S. 494, 509, 519. . . ."

The question of constitutional validity is not to be determined by artificial standards. What is required is that state action, whether through one agency or another, or through one enactment or more than one, shall be consistent with the restrictions of the Federal Constitution.

"Discrimination, like interstate commerce itself, is a practical conception. We must deal in this matter, as in others, with substantial distinction and real injuries. **Schaffer v. Carter**, 252 U. S. 37, 55, 64 L. ed. 445, 457, 40 S. Ct. 221."

The statute must be judged by its natural and reasonable effect. **Colon v. New Hampshire**, 171 U. S. 30, 33, 34. The validity of a statute is to be tested by consideration

of the general principles, application to the questions and by the examination of the terms of the act, and what it authorizes, and not by what has been done and probably will be done under it. **State v. Hall**, 178 Wis. 172, 190 N. W. 457; 16 C. J. S., Constit. Law, Par. 97.

Under the foregoing rules the question for this Court first to determine is the object and purpose of the statute, its practical operation and its natural and reasonable effect on the statutory plan of regulation embodied in the National Act.

An independent consideration of the meaning of section 111.02 (3) (b) as applied to the final order will, we believe, show conclusively that the final order as issued was intended by the Board, and, under the State Act, resulted in the loss of employee status for purposes of collective bargaining of the fourteen appellants.

The Wisconsin Court, in ruling that the fourteen appellants were still employees of the company, nevertheless did not rule that they were employees for all purposes of the Wisconsin Act. To reach its decision it omitted the most vital section of the Wisconsin Act on which the loss of status of the appellants was based, namely, the section of the definition of "employee" whereby subdivision (b) is made referable to strikers only.

The respondent company conceded that the fourteen appellants, under the Board's ruling, suffered loss of protection from discriminatory discharge and loss of the right to be treated as employees for any of the purposes of the Wisconsin Act. The Wisconsin Board's counsel in their brief stated that striking employees who have committed unfair labor practices are apparently not entitled to be treated as employees for purposes of administering the act in relation to that particular controversy (a current

labor dispute). The Wisconsin Act is not reasonably susceptible of two interpretations. This Court has often stated:

“When a statute is reasonably susceptible of two interpretations, we have preferred the meaning that preserves to the meaning that destroys. . . . But avoidance of the difficulty will not be pressed to the point of disingenuous evasion.” *Hopkins Fed. Savings & Loan Assoc. v. Cleary*, 292 U. S. 315, 80 L. ed. 251. # *Moore Ice Cream Co. v. Rose*, 289 U. S. 373, 77 L. ed. 1265, 535 S. Ct. 620. #

. This Court, if satisfied that the State Act is not susceptible of two interpretations, is not required to accept the construction of the State Act where the construction appears to be unreasonable, improper and contrary to the express language of the statute.

Although the state court had ruled that the employee relationship was not terminated—a contention never made by appellants—it did not specifically rule that the employee status for purposes of the State Act was not in any way terminated or impaired by the Board’s finding them guilty of unfair labor practices. The Board’s specific findings of fact and conclusions of law as to individual appellants are made purposeless by the Wisconsin Court’s apparent construction of the final order.

We believe that a fair analysis of the final order, as confirmed by the Court, establishes that the State Board sought to accomplish state purposes which are repugnant to and in conflict with the federal purposes under the National Act.

The respondents urge that this Court’s decision in the *Fansteel Metallurgical Corp. v. N. L. R. B.*, 306 U. S. 240, supports the authority of the State Board to terminate the statutory protection and benefits of striking employees

who commit wrongful acts in the course of a labor dispute. The Fansteel case, we submit, gives no such support to respondent's contention. In its Fansteel decision this Court refused to confirm an order of reinstatement by reason of a discriminatory discharge because of the wrongful conduct of the strikers involved. Such reinstatement would not serve to fulfill the aims and purposes of the National Act. The State of Wisconsin, however, in its State Act terminates the right of striking employees guilty of unfair labor practices, as set forth in section 111.06 (2) (a) to (j), to statutory protection or exercise of statutory benefits.

There is a considerable difference between the refusal of the Board to reinstate because of misconduct of strikers and the State itself terminating the right to protection from discrimination because of minor acts of misconduct of strikers. It is this aim and objective of the State Act which makes the Act so drastically repugnant to federal regulation and purposes.

VIII.

Conclusion.

The Wisconsin cases referred to above establish the imperative necessity for a decision in this case on the merits. The federal purposes of the National Act are impossible of achievement in Wisconsin because of the intrusive and improper claim to jurisdiction over the subjects covered by the Federal Act on the part of the State Board.

Neither reason nor authority can support the attempt of the State to undermine the supremacy of the National Act in the field of labor relations affecting interstate commerce. The extension of State acts of the character of the Wisconsin Act to other states will certainly nullify the National Act.

The warnings of Justice Jackson against Balkanizing American commerce, as stated in **Duckworth v. Arkansas**, 86 L. Ed., page 261, are particularly applicable to the Wisconsin Act. The State Act cannot be viewed as an exercise of the police power alone but rather as a local system for restraining Federal regulation of interstate commerce. Justice Jackson stated:

"Congress may very properly take into consideration local policies and dangers when it exercises its power under the commerce clause. But to let each locality conjure up its own dangers and be the judge of the remedial restraints to be clamped onto interstate trade inevitably retards our national economy and disintegrates our national society" (86 L. Ed., at p. 267).

The foregoing statements are particularly applicable in the instant case. We submit this Court should hold the Wisconsin Act unconstitutional as applied to interstate commerce and reverse the Order of the Board issued in this case with costs.

Respectfully submitted,

LEE PRESSMAN,
JOSEPH KOVNER,
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Attorneys for Appellants.

APPENDIX.

Memorandum accompanying Order and Direction of Election in petition of Allen-Bradley Company to determine Bargaining Representatives:

"The Allen-Bradley Company, a corporation located in the City of Milwaukee, Wisconsin, on the 9th day of September, 1940, filed with this Board a petition requesting the Board to conduct an election among the employes of the Company constituting the production, maintenance, testing and service employes, for the purpose of determining whether or not such employes desire to be represented for the purpose of collective bargaining by Local No. 1111, United Electrical, Radio and Machine Workers of America, affiliated with the C. I. O. The Company is engaged in the manufacture and sale of electrical control equipment, employs a total of approximately 900 men and women, of which approximately 500 are employed in a capacity bringing them within the proposed collective bargaining unit.

"The Company's office and manufacturing plant is located in the City of Milwaukee, Milwaukee County, Wisconsin. The majority of the raw materials obtained for use in the Company's manufacturing operations is obtained from sources outside the State of Wisconsin, and a majority of its finished product is sold and shipped out of the State of Wisconsin.

"Local No. 1111, on July 1, 1939, filed with the National Labor Relations Board charges against the Allen-Bradley Company, alleging that the Allen-Bradley company interfered with, discriminated against and is coercing employes who are members of Local No. 1111, that the Company has failed to bargain with the Union in good faith, that it engaged in unlawful acts in order to disrupt and destroy the Union, that it had promised and offered preferential treatment and security of employment to persons active in their em-

ployment during the course of a strike without regard to the right of the striking employees, all for the purpose of disrupting and destroying the right of said employees under the National Labor Relations Act. On September 20, 1939, the Union filed amended charges against the Company, which were similar in nature, but far more detailed. Up to the time of the hearing on this matter on the 24th day of September, 1940, although the original charges had been filed nearly a year and a quarter prior to the time of such hearing, it did not appear that the National Labor Relations Board had taken any steps to prosecute such charges, although an investigation of the charges had been made early in the year. There was received in evidence a letter signed by John G. Schott, Regional Director of the Twelfth Region of the National Labor Relations Board, addressed to Max E. Geline, Attorney for Local No. 1111. It was stipulated by the parties that such letter might be received and the statements contained therein would be considered the testimony given by Mr. Schott if he were called as a witness. Mr. Schott stated that the charges made against the Allen-Bradley Company had been investigated by the office of the Twelfth Region, that a report had been made to the National Labor Relations Board, and that the Board had directed Mr. Schott as such Regional Director to issue a complaint against the Allen-Bradley Company alleging a violation of Section 8 (2) (3) and (5) of the National Labor Relations Act. Mr. Schott further stated that he had directed the acting Regional Attorney to prepare such a complaint as soon as the legal schedule of the office permitted.

"The Union objects to this Board taking any proceeding to determine the wishes of the employees of the Allen-Bradley Company at this time on the ground that the National Labor Relations Board has authorized the issuance of a complaint against the Company, charging among other things that the Company has failed to bargain in good faith with Local No. 1111 as the exclusive bargaining agency of employees in a

collective bargaining unit, and that if any such proceedings were conducted by this Board, they would be in conflict with the orderly administration and enforcement of the National Labor Relations Act by the National Labor Relations Board. The Union argues that there is no question in the eyes of the government of the United States whether Local No. 1111 represents a majority of the employees of the Allen-Bradley Company or not, and that if there were any such question, the National Labor Relations Board would not authorize the issuance of a complaint charging the Company with failure to bargain in good faith, in violation of Section 8 (5) of the National Labor Relations Act. They further argue that because such complaint has been authorized, there is a presumption of some unfair labor practices on the part of the Company during this whole period of time, and continuing up to the present time, and therefore this Board should not order an election under the circumstances of a situation where unfair labor practices are committed.

"This Board has never determined the question as to how far it might go in denying a petition proper in form when there appears to be a question of representation raised, but proof was offered that satisfied the Board that the Company was guilty of unfair labor practices. If we were convinced that the unfair labor practices were of such nature and the employees, as a result of such practices, of such a mentality that it would be impossible by a secret ballot to determine their true desires with reference to collective bargaining, it might be that the Board would conclude it had the power and might see fit to exercise the power to dismiss the petition and refuse to conduct the election.

"We have present in this case, however, no such situation, and as we see it no proceeding pending which will in any way conflict with the orderly administration by the National Labor Relations Board of the

National Labor Relations Act. Even though counsel for the Union's position is correct, and we do not believe that legally it is, that a presumption of guilty arises upon the issuance by the National Labor Relations Board of a complaint charging an employer with unfair labor practices, it is our position that it will take more than a mere presumption of guilt before we will deny to either an employer or employes the right to express by secret ballot at an election fairly conducted their wishes as to collective bargaining.

"The manufacturing plant of the Allen-Bradley Company is located in Wisconsin. The employes in that plant live in Wisconsin, work in Wisconsin, their employment contract is made in Wisconsin. The legislature of this State has seen fit to pass legislation protecting the rights of the Wisconsin Employes to bargain collectively through representatives of their own choosing, without coercion from any source, and in determining whether or not employes desire to so bargain and what representative they desire to represent them, has provided that such determination may be made only by a secret ballot at an election conducted by this Board. Under this law, employers are required to bargain collectively with any representatives selected by a majority of his employes as the exclusive bargaining agent for all. *This Board has been given the duty of administering the provisions of the Wisconsin Employment Relations Act, and the only way it may be administered, in our opinion, is by conducting elections in all cases in which a question of representation arises among the employes of Wisconsin industries, and where such question is in existence at the time the election is asked for. (Italics added.)*

"We have recognized the authority of the National Labor Relations Board, and do recognize it in any case in which that Board has seen fit to pass upon a representation question when its jurisdiction has been properly invoked, and call the attention of the parties

to our decision in the Matter of the Petition of the Independent Union for an election at the Allis-Chalmers Manufacturing Company. No investigation of representatives of the Allen-Bradley Company has ever been made by the National Labor Relations Board, and none has ever been requested, and that Board has never been called upon to certify a collective bargaining representative. We do not feel that merely because at some time in the future the National Labor Relations Board may see fit to issue a complaint against the Allen-Bradley Company based on charges filed more than one year ago, that this Board should not at this time submit to the employees of the Allen-Bradley Company a question of their desires in reference to their collective bargaining representative.

“In submitting this question to the employees of the Allen-Bradley Company, we do not take the position that any election conducted by this Board will be binding upon any other administrative board which might have jurisdiction over such questions. It will determine the rights of the parties as such rights are affected by the Wisconsin Statutes. It will in no way interfere with any proceeding to be commenced in the future by the National Labor Relations Board, nor in the prosecution of any complaints such Board may see fit to prosecute against the Allen-Bradley Company. We recognize that such election can in no way limit the power of the National Labor Relations Board nor limit the order that such Board might make as a result of any hearings it may hold in the future, if such complaint is filed and hearings are held. If we felt that the conduct of an election among the employees of this plant would in any way interfere with the orderly administration of the duties of any national administrative board having jurisdiction to proceed, we would without hesitation come to a conclusion different from that contained in our Order of this date. Because we are unable to find any such conflict or any such interference, because the statute under which we are organized is so clear and explicit, and because

it clearly appears to us that there now exists a question of representation among these employees, we feel that an election should be held at this time in order that such employees may have an opportunity to freely express their opinion by secret ballot as to whether they desire this Union to continue to represent them or not."

**"WISCONSIN EMPLOYMENT RELATIONS
BOARD,**

By Henry C. Fuldner,
 Henry C. Fuldner, Chairman,
 L. E. Gooding,
 L. E. Gooding, Commissioner,
 R. Floyd Green,
 R. Floyd Green, Commissioner."

